

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 21

TREE OF LIFE, INC. d/b/a  
GOURMET AWARD FOODS<sup>1</sup>

Employer

and

Case 21-RC-20854

GENERAL TRUCK DRIVERS, OFFICE,  
FOOD & WAREHOUSE UNION, TEAMSTERS  
LOCAL 952, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS<sup>2</sup>

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record<sup>3</sup> in this proceeding, the undersigned makes the following findings and conclusions.<sup>4</sup>

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Petitioner's name appears as amended at the hearing.

<sup>3</sup> The Employer timely filed a brief, which was duly considered.

<sup>4</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

## **I. SUMMARY AND CONCLUSION**

The Employer, Tree of Life, Inc. d/b/a Gourmet Award Foods, is a Delaware corporation engaged in the business of the receipt and wholesale distribution of food products for commercial customers. The Employer has a facility located in Los Angeles, California (hereinafter referred to as the “facility”).<sup>5</sup> The Petitioner filed the instant petition seeking to represent all full-time and regular part-time drivers, warehouse, warehouse clerical, and sanitation employees, excluding all other employees, office clerical, guards and supervisors as defined in the Act. At hearing, the Petitioner amended its petition to include warehouse leads and driver leads in the petitioned-for unit. The Employer does not dispute that the employees in the petitioned-for unit, as amended, are appropriately included, but asserts that merchandisers, hourly sales associates, customer service employees and purchasing employees must also be included because they share a sufficient community of interest with the other unit employees.<sup>6</sup>

Based on the record as a whole and the Employer’s brief, I find the petitioned-for unit, as amended, is an appropriate unit and fail to find that the merchandisers, customer service employees, purchasing employees or hourly sales associates share a community of interest with the unit employees sufficient to require their inclusion in the appropriate unit. Accordingly, I shall direct that an election be held in the petitioned-for unit, as amended at the hearing.

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<sup>5</sup> Throughout the transcript, this Los Angeles facility is also referred to as the Commerce facility.

<sup>6</sup> At the hearing, the Employer stated there are approximately 116 employees in the petitioned-for unit. Of the 116, the record indicates that 37 are drivers and 79 are warehouse, warehouse clerical, sanitation and lead employees. In the classifications the Employer contends should be included in the unit, there are approximately 63 merchandisers, three customer service employees, three purchasing employees and 10 to 12 hourly sales associates, which, if included, would increase the unit size to between about 195 and 197 employees.

Below, I have set forth the record evidence concerning the Employer's operations, including the evidence concerning the community of interest factors the Board considers when determining unit appropriateness. Following the presentation of the evidence, I have set forth a section applying the Board's legal standards to the evidence. The decision concludes with a direction of election and the procedures for requesting review of this decision.

## **II. RECORD EVIDENCE**

### **A. The Employer's Operations**

The Employer receives and ships specialty food products from its Los Angeles, California facility to supermarkets and other stores in California, Arizona and Nevada. The approximately 250,000 square foot facility includes a warehouse and front office area. Sales associates take sales orders from customers at their stores and place the orders with the facility. Those orders are pulled by warehouse employees and then loaded onto trucks for delivery. Drivers then drive the loaded trucks to the customer stores for delivery, where merchandisers and, in some cases sales associates, break down the pallets of delivered product and stock the product on the shelves at the customers' stores.

The Employer's warehouse employees perform a number of different tasks. On the day shift, warehouse employees in the receiving department work with third party carriers and the Employer's drivers to receive product at the warehouse, enter it into the system and put it away. Warehouse employees in the repack department cut product cases in half and shrink wrap them so they are available for customers in those quantities. Inventory control employees in the warehouse count product and check code dates to

make sure the freshest product is available. Those warehouse employees working in the space management department make sure that the faster-moving product is more readily available for the order pullers on the night shift (warehouse employees) and also replenish product from more remote areas of the warehouse. The maintenance and sanitation employees in the warehouse keep the facility clean and change light bulbs as needed. The warehouse clerical employee maintains the daily time schedule for receiving product from the third party carriers. Warehouse employees on the day shift are supervised by Chris Mills. Mills reports to Warehouse Manager Andy Huizar, who, in turn, reports to Director of Operations Claude Blumenzweig.

Warehouse employees on the swing shift pull orders to be loaded for delivery, place them on pallets, wrap them, and load them onto trucks for delivery. These warehouse employees are supervised by production supervisors Donovan McIntosh and Luis Rivera.

The Employer's drivers come to the facility and pick up the loaded trucks for their daily delivery routes.<sup>7</sup> When drivers get to the store, their load is checked in by the customer's receiving employee. Drivers may also be responsible for breaking down the delivered pallet and making sure that the order is correct. Transportation Supervisors Greg Lopez, John Martinez and Dan Ortiz supervise the drivers.

While the record does not disclose the exact functions of the warehouse and driver leads, Human Resources Manager Lenore Ramirez<sup>8</sup> testified that leads spend about 80% of their work time performing the same tasks as the other employees.

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<sup>7</sup> Long haul drivers with routes to Arizona, Nevada and Northern California may be gone 2 days at a time.

<sup>8</sup> Ramirez was the only witness who testified at the hearing.

Merchandisers spend the majority of their work time at the customers' stores, where they break down the pallets of product (if they have not already been broken down), move the product boxes into the store aisles, and then stock the product on the shelves.<sup>9</sup> While stocking product in the stores, the merchandisers also make sure the shelves are clean, that the product labels are straight and spaced correctly, and that the oldest product is stocked at the front of the shelves. The merchandisers report to sales supervisors, who, in turn, report to Regional Sales Manager Brian Barr. Barr reports to Regional Vice President of Sales Todd Marks.

Sales associates take orders at customer stores, place the orders with the facility, and make sure that the orders arrive and are merchandised.<sup>10</sup> The hourly sales associates perform both sales and merchandising functions.<sup>11</sup> The sales associates report to the same supervisors as the merchandisers.

There are three customer service employees who work in the office area at the front of the facility. The customer service employees handle issues that come up with drivers, merchandisers and sales employees, as well as calls from smaller customers who place orders directly with the Employer. Customer service employees spend about 50% of their time working directly with customers by telephone and email. Customer service employees are supervised by Lana Austin, who also reports to Regional Vice President of Sales Marks.

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<sup>9</sup> Of the approximately 63 merchandisers, 53 work at stores in California, five work in Arizona and five work in Nevada.

<sup>10</sup> The Employer employs both hourly and commissioned sales associates. No party contends that the commissioned sales associates should be included in the unit found appropriate and they are, accordingly, excluded from the unit.

<sup>11</sup> The 10-12 hourly sales associates that the Employer asserts should be included in the unit are paid hourly because they work at smaller stores with less volume. They perform the same functions as other sales associates but also do their own merchandising.

There are three purchasing employees who also work in the office area at the facility. Purchasing employees work in cubicles, close to the warehouse. The purchasing employees follow up on purchase orders placed by the Employer's buyers. In this regard, purchasing employees make sure that the right amount of product is shipped to the facility and that it meets the timeframe for delivery specified by the Employer.<sup>12</sup> The purchasing employees are supervised by the buyers.

## **B. COMMUNITY OF INTEREST FACTORS**

### **1. Functional Integration**

While the Employer's operation is well-integrated, the record reveals that employees perform a number of different functions in different locations, depending on their classification. The warehouse employees work in the warehouse where they pull and prepare product for delivery, and load product onto delivery trucks. The drivers pick up product at the warehouse and deliver it to customer stores in California, Nevada and Arizona. Sales associates and merchandisers work at customer stores to write and place orders, and to break down and stock the delivered product, respectively. Customer service and purchasing employees work in the office area at the facility, where they handle customer and employee issues related to product orders. Purchasing employees also work in the office area at the facility, where they ensure the timely receipt of product at the warehouse.

### **2. Frequency of Contact Between Employees**

The record reveals that customer service employees have contact with drivers, merchandisers and sales associates, usually by telephone, in their efforts to solve

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<sup>12</sup> Product comes into the facility directly from vendors, third party carriers, or drivers who pick it up from the vendors and deliver it to the warehouse.

problems that come up with product deliveries. Human Resources Manager Ramirez testified that customer service employees have daily contact with drivers, via Nextel telephones, to handle issues such as product being refused by the customer. Customer service employees have access to the orders in the computer system so they can troubleshoot the problem. Customer service employees may also have face-to-face contact with drivers if there is a problem with paperwork and the customer service employee needs to see it.<sup>13</sup> Customer service employees may also work as a liaison between drivers and merchandisers to coordinate a time to meet at a certain store. In addition, customer service employees may work with warehouse employees to get last minute orders through for next day delivery. Ramirez testified that this type of contact happens "all the time."

Purchasing employees have contact with warehouse employees when they make sure that ordered product has been delivered to the Employer's facility and that it has been entered into the system.

Ramirez also testified that merchandisers have daily contact with drivers. Merchandisers may have telephone conversations with drivers to coordinate delivery times or to check on the status of deliveries. Merchandisers may also call customer service employees if there is a problem with a load. Merchandisers come to the facility for meetings, to pick up product for special deliveries and to drop off expense or mileage reports. While local merchandisers go to the facility more frequently, all of the merchandisers must go to the facility for three to four meetings per year.

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<sup>13</sup> There is no record evidence as to the frequency of this face-to-face contact.

Like merchandisers, sales associates come to the facility to attend the approximately three to four meetings per year and to drop off paperwork.<sup>14</sup> Human Resources Manager Ramirez stated that hourly sales associates have some contact with drivers when they meet at stores and that sales associates have the same type of contact, albeit to a lesser degree, that merchandisers have with customer service employees.

The same parking lot and break room is available to all employees working at the facility, as well as to those employees visiting the facility to attend meetings or to drop off paperwork.

### **3. Interchange With Other Employees**

According to Human Resources Manager Ramirez, two employees have moved from the warehouse into customer service and purchasing positions.<sup>15</sup> One of the current customer service employees used to work as a transportation clerical, checking in drivers and their paperwork (a function now performed by supervisors). In the second instance, the record reveals that a current purchasing employee used to do inventory control in the warehouse before he secured a purchasing position through the internal job posting procedure.<sup>16</sup>

### **4. Common Skills and Functions**

While the record discloses that some of the employees in the petitioned-for unit share some common skills and functions with those employees in the classifications in dispute, it also reveals significant differences in their respective skills and functions.

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<sup>14</sup> The record does not disclose how often sales associates or merchandisers come to the facility to drop off paperwork.

<sup>15</sup> The record does not reflect when these transfers occurred.

<sup>16</sup> The same posting procedure is available to all employees, regardless of classification.



As for similarities, Ramirez stated that warehouse employees who perform inventory control follow the same procedure as merchandisers when they replenish product at warehouse, to the extent that they stock the oldest product in front. In addition, merchandisers and sales associates, unlike the other employees, use handheld computers called TELXONs to write and transmit orders and credits to the Employer.

Most warehouse positions require certification on forklifts and electric pallet jacks. Drivers, in addition to being required to have the appropriate driver's licenses, should also be certified on forklifts and electric pallet jacks. Ramirez testified that such certifications for drivers are not required but are preferred because drivers would need to be certified on these items to move things on their trucks. Customer service employees and purchasing employees do not need such certifications.

Customer service employees, purchasing employees and merchandisers must be able to speak English. Drivers also need to speak English, but do not need the same communication skills as customer service and purchasing employees. Warehouse employees do not need to be fluent in English.

## **5. Commonality of Wages, Hours and Other Working Conditions**

While the record does not reveal the precise pay rates of the employees in the petitioned-for unit or those for the employees the Employer seeks to include in the unit, all employees at issue herein, except for the drivers, are paid hourly.<sup>17</sup>

The pay for warehouse employees ranges from \$10.09 per hour to \$18 per hour (for leads). Before the drivers were put on component pay (about three weeks before the hearing in the instant matter), their hourly pay ranged from \$13 to \$18 per hour. Human

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<sup>17</sup> Drivers receive "component pay" based on the number of miles driven, and the number of deliveries and pickups performed. Drivers are also paid by the hour for down time, such as weather delays, and for time off.

Resources Manager Ramirez testified that she did not know what the average component pay was. In addition, drivers, who use company vehicles to deliver product, are paid 44 cents per mile.<sup>18</sup>

Ramirez stated that the merchandisers, hourly sales associates, customer service employees and purchasing employees are all paid on an hourly basis and within the same range as the other hourly employees. The pay for merchandisers ranges from \$13 to \$15 or \$16 per hour. In addition, merchandisers, who drive their own vehicles, are paid 32 cents per mile.<sup>19</sup>

All of these employees receive the same benefits – the same vacation, holidays, medical, dental and vision coverage, short- and long-term disability insurance, life insurance and employee discounts. The benefits are the same for hourly and commissioned employees corporate wide, and are determined at the corporate level.

As for their schedules, day shift warehouse employees have staggered start times beginning between 4:00 a.m. to 6:00 a.m. Warehouse employees working on the swing shift work four, 10-hour days per week, starting at about 3:00 p.m. The warehouse clerical employee and the sanitation employees work eight-hour shifts beginning at about 8:00 a.m. The warehouse leads start between about 4:00 a.m. and 6:00 a.m. Warehouse employees have set breaks and lunches determined by management. Warehouse employees punch in and out on a time clock in the warehouse.

Drivers' start times range from 12:00 midnight to 5:00 a.m., depending on their routes. The lead driver starts at about 2:00 a.m. Drivers' breaks and lunches are determined while in the field and they do not have to check with anyone before taking

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<sup>18</sup> Drivers keep track of their miles on the XATA computer system in their trucks or in their driver logs.

<sup>19</sup> Merchandisers keep track of their miles on reports they fill out.

them. Drivers no longer have to punch in and out (as of about three weeks before the hearing) and keep track of their hours on the XATA computer system or in their driver logs.

The schedules for merchandisers, set by their supervisors, are based on the orders being delivered to the stores. Merchandisers, who use their own vehicles, drive from their homes directly to the customer stores where they work. Merchandisers verbally report their hours to their supervisors at the end of the day and submit timesheets weekly. Merchandisers do not have set breaks or lunches, but log their breaks and lunches on timesheets.

The record does not disclose the schedules for hourly sales associates.

The three customer service employees work eight-hour shifts with staggered start times from 7:30 a.m. to 8:30 a.m. Customer service employees do not have assigned break or lunch times, but such times are scheduled by their supervisor to ensure coverage. Customer service employees punch in and out on the time clock in the warehouse or in the copy room area.<sup>20</sup>

The purchasing employees work eight-hour shifts starting at about 7:00 a.m.

The record also discloses that the warehouse employees, sanitation employees and drivers wear uniforms – striped shirts with their names and the company logo. These employees may wear jeans or uniform pants provided by the Employer.

Purchasing employees and customer service employees wear business casual attire. Merchandisers wear Dockers-style pants and collared shirts. The record does not disclose what hourly sales associates wear to work.

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<sup>20</sup> Sometimes, customer service employees come in through the warehouse if the front doors are locked, but the doors open at 7:00 a.m.

Finally, the record does not disclose whether any or all of these employees are subject to the same company handbook or company rules.

## **6. Supervision**

There is little common supervision among the employees. All day shift warehouse employees, including the warehouse clerical, are supervised by Chris Mills. The night shift warehouse employees are supervised by two production supervisors. The drivers are supervised by three transportation supervisors.

The merchandisers and sales associates are supervised by the sales supervisors. These supervisors are based out of the facility, but go into the field to do store checks. These supervisors can work out of their homes or come to the facility and work out of one office that is available for the supervisors to share.

The customer service employees report to the customer service supervisor and the purchasing employees are supervised by the buyers.

## **7. History of Collective Bargaining**

There is no evidence of any collective bargaining history between the Employer and the Petitioner concerning the petitioned-for employees.<sup>21</sup>

## **II. ANALYSIS**

The Employer contends that the merchandisers, hourly sales associates, customer service employees and purchasing employees share a community of interest with the employees in the petitioned-for unit, as amended, sufficient to require their inclusion in the unit. In The Boeing Company, 337 NLRB 152 (2001), the Board articulated its policy for determining appropriate units:

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<sup>21</sup> The Petitioner requests that I take administrative notice of the petition in A-1 International Foods, Inc., Case 21-RC-19954, filed on June 1, 1998. While that petition may have involved the same facility, it did not involve the Employer and is not relevant to the instant matter.

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry in the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. Overnite Transportation Co., 331 NLRB 662, 663 (2000); NLRB v. Lake County Assn. for the Retarded, 128 F.3d 1181, 1185 fn. 2 (7<sup>th</sup> Cir. 1997). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. State Farm Mutual Automobile Insurance Co., 163 NLRB 677 (1967).

The Board's primary means of evaluating the appropriateness of a unit is determining whether the proposed unit shares a community of interest. The Board examines several factors to determine whether the proposed unit shares a community of interest including: (1) functional integration, (2) frequency of contact with other employees, (3) interchange with other employees, (4) degree of skill and common functions, (5) commonality of wages, hours, and other working conditions, and (6) shared supervision. Publix Supermarkets, Inc., 343 NLRB No. 109 (2004).

In the present case, the Employer asserts that merchandisers, hourly sales associates, customer service employees and purchasing employees should be included in the unit found appropriate because of their high degree of functional integration with the other employees. While it is clear that the merchandisers and hourly sales associates rely on warehouse employees and drivers to perform their respective functions so that the ordered products are properly prepared and delivered to the customers' stores, the record discloses that the merchandisers, hourly sales associates, customer service employees and purchasing employees perform distinctively different functions than those performed by employees in the petitioned-for unit. The petitioned-for employees prepare product for delivery and deliver that product to the customers' stores. In this regard, warehouse

employees work at the warehouse where they pull and prepare product for delivery, and where they load that product onto drivers' trucks. Drivers pick up loaded trucks at the facility and deliver the product on the trucks to the customers' stores. Merchandisers and sales associates work primarily in the customers' stores, stocking customers' shelves and ordering product for those customers. Customer service employees resolve customer issues, including those brought to their attention by drivers, merchandisers and sales associates. Purchasing employees order product from vendors and ensure its proper receipt and storage at the facility. Accordingly, contrary to the Employer's contention, it does not appear that level of functional integration mandates that the merchandisers, hourly sales associates, customer service employees and purchasing employees be included in the unit.

While the record discloses that customer service employees have regular telephone contact with drivers and merchandisers, there is less evidence of face-to-face contact between the petitioned-for employees and those the Employer seeks to include. In this regard, warehouse employees work at the facility and drivers go to the facility before they go out on their delivery routes, while merchandisers and sales associates spend the majority of their time at customers' stores and are only required to go to the facility for three to four meetings per year. In addition, while customer service employees and purchasing employees work at the facility and have some face-to-face contact with other employees, such contact appears limited by their distinct functions. Finally, while the shared break room, parking lot and warehouse time clock may provide opportunities for contact between employees at the facility during nonworking time, their disparate schedules and breaks suggest that such contact is not frequent.

In addition, there is little evidence of interchange among employees in the petitioned-for unit and the classifications the Employer seeks to include. In this regard, it appears that one employee has transferred from the warehouse to a purchasing position and that another has transferred to customer service from a warehouse position that no longer exists. There is no record evidence of interchange between the petitioned-for employees and merchandisers or sales associates.

The record also demonstrates a wide range in skills and functions among the petitioned-for employees and those that the Employer asserts should be included. Merchandisers and hourly sales associates stock product at customers' stores and use handheld computers to write and transmit orders, while drivers and warehouse employees prepare, package, load and deliver product. In addition, unlike the employees the Employer seeks to include, warehouse employees and drivers are typically certified on forklifts and electric pallet jacks. Further, while drivers must have communication skills comparable to merchandisers, neither the drivers nor the warehouse employees require the communication skills of customer service or purchasing employees.

With regard to wages, hours and other working conditions, the record reveals similarities in pay and benefits but some distinct differences in working conditions between the petitioned-for employees and those the Employer seeks to include in the unit. While the record discloses myriad schedules for the petitioned-for employees and for those in the classifications in dispute, the warehouse employees have set lunch and break times. In addition, employees in the petitioned-for classifications wear Employer-provided uniforms while the employees the Employer seeks to include do not. Further, as mentioned above, drivers and warehouse employees, as well as customers service and

purchasing employees, go to the facility daily, but the merchandisers and sales associates do not.

The record discloses no common supervision among employees in the petitioned-for unit and the classifications in dispute. In this regard, while the merchandisers and sales associates are supervised by sales supervisors, the warehouse employees, drivers, customer service employees and purchasing employees are separately supervised. Accordingly, it does not appear that this factor weighs for or against the inclusion of the disputed classifications.

Finally, there is no record evidence of any bargaining history between the Petitioner and Employer regarding the petitioned-for unit or the classifications in dispute.

In sum, I find that the petitioned-for unit, as amended, is an appropriate unit and that the Employer has failed to establish that the merchandisers, hourly sales associates, customer service employees or purchasing employees share a community of interest sufficient to require their inclusion in that unit. This finding is based on the differences in skills, functions and working conditions, as well as the degree of contact and lack of interchange, between employees in the petitioned-for unit and those in the classifications the Employer asserts should be included in the unit.

### **III. CONCLUSION**

On the basis of the foregoing and the record as a whole, I find the petitioned-for unit, as amended, appropriate and do not find that the merchandisers, hourly sales associates, customer service employees or purchasing employees share a community of interest sufficient to require their inclusion in that unit. Therefore, I shall exclude them



from the petitioned-for unit. Accordingly, I shall direct an election in the following appropriate unit (hereinafter “Unit”):

All full-time and regular part-time drivers, warehouse employees, warehouse clerical employees, sanitation employees, warehouse leads and driver leads employed by the Employer at its facility located at 5560 East Slauson Avenue, Los Angeles, California; excluding all other employees, merchandisers, hourly sales associates, customer service employees, purchasing employees, commissioned sales associates, office clerical employees, guards and supervisors as defined in the Act.

There are approximately 116 employees in the Unit found appropriate.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.

Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated

before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the **General Truck Drivers, Office, Food & Warehouse Union, Teamsters Local 952, International Brotherhood of Teamsters.**

### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994).

In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, **on or before** November 25, 2005. No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (213)894-2778. Since the list is to be made

available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

### **NOTICE OF POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three (3) working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. The Board in Washington must receive this request by **5 p.m., EST, on** December 1, 2005. This request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described

document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site:[www.nlr.gov](http://www.nlr.gov).

**DATED** at Los Angeles, California, this 17<sup>th</sup> day of November 2005.

/s/Victoria E. Aguayo\_\_\_\_\_  
Victoria E. Aguayo  
Regional Director, Region 21  
National Labor Relations Board